



May 24, 2000

Ms. Janice Marie Wilson  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2000-2059

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136891.

The Texas Department of Transportation ("TxDOT") received a request for its investigation file relating to a construction accident that occurred on Interstate Highway 20 at Farm to Market Road 1382 in Dallas County. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The primary purpose of the litigation exception is to enable governmental bodies to protect their position in litigation by requiring parties seeking relevant information to obtain it, if at all, through "discovery" processes. *Cornyn v. City of Garland*, 994 S.W.2d 258, 265 (Tex. App. -- Austin 1999, no pet.) (citing Tex. Att'y Gen. Open Records Decision No. 454 (1986)). The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. To show that section 552.103 is applicable, the governmental body must demonstrate that: 1) litigation is pending or reasonably anticipated at the time of the request, and 2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence

showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). A governmental body may establish that litigation is reasonably anticipated by (1) showing that it has received a claim letter from an allegedly injured party or his attorney, and (2) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (the “TTCA”). Open Records Decision No. 638 (1996). Whether litigation is reasonably anticipated must be determined on a case by case basis. ORD 452 at 4.

TxDOT has submitted two letters which you claim comply with the TTCA requirements. The demand letters were prepared and submitted by an injured party’s attorney. We conclude that litigation is reasonably anticipated, and that the information submitted is related to the anticipated litigation for purposes of section 552.103.

However, included among the documents you seek to withhold is a completed police report. *Completed* reports are expressly made public by section 552.022(a)(1) of the Government Code and are not excepted from required disclosure unless expressly made confidential by other law. Gov’t Code § 552.022(a). Sections 552.103, 552.107, and 552.111 are discretionary exceptions that do not make information confidential. See Open Records Decision No. 665 at 2 n. 4 (2000). The police report must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

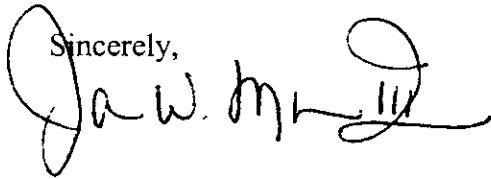
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", written over the word "Sincerely,".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/CHS/ljp

Ref: ID# 136891

Encl. Submitted documents

cc: Mr. Donald C. McLeaish  
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P.O. Box 381609  
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(w/o enclosures)